

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 3, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

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Tentative Ruling:

- NONE LISTED -

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1:21-11450 Roberto C. Hernandez

Chapter 11

#1.00 Motion for relief from stay [AN]

RAFAEL HERNANDEZ
VS
DEBTOR

fr. 9/22/21

Docket 13

Tentative Ruling:

Deny the motion.

At this time, the debtor in possession (the "DIP") has standing to bring the claims being asserted by movant for the benefit of all creditors. Moreover, as noted by the Fifth Circuit Court of Appeals in *American National Bank v. MortgageAmerica Corp.* (*In re MortgageAmerica Corp.*), "[a]ctions for the recovery of the debtor's property by individual creditors under state fraudulent conveyance laws [interfere] with [the] estate and with the equitable distribution scheme dependent upon it. . .". *MortgageAmerica Corp.*, 714 F.2d 1266, 1275–76 (5th Cir. 1983) (explaining state fraudulent conveyance causes of action asserted by trustee are for "benefit of all creditors"). Finally, the statute of limitations to recover the transfers at issue under the California Uniform Transfer Act has not yet run for the DIP or a duly-appointed trustee. *In re EPD Inv. Co., LLC*, 523 B.R. 680, 685 (B.A.P. 9th Cir. 2015).

Debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

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CONT... Roberto C. Hernandez

Chapter 11

Movant(s):

Rafael Hernandez

Represented By
Craig B. Forry

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:21-11245 Bhupinder Singh Sandhu

Chapter 13

#2.00 Motion for relief from stay [AN]

JASBIR KAUR SANDHU
VS
DEBTOR

Docket 30

Tentative Ruling:

Party Information

Debtor(s):

Bhupinder Singh Sandhu

Represented By
Eric C Morris

Movant(s):

Jasbir Kaur Sandhu

Represented By
Daren M Schlecter

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10609 Melkon Zakaryan

Chapter 13

#3.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melkon Zakaryan

Represented By
Matthew D. Resnik

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-10619 Reginald Vergial Liddell

Chapter 13

#4.00 Motion for relief from stay [RP]

CITIBANK, N.A.
VS
DEBTOR

Docket 63

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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CONT... Reginald Vergial Liddell

Chapter 13

Debtor(s):

Reginald Vergial Liddell

Represented By
Rabin J Pournazarian

Movant(s):

Citibank, N.A.

Represented By
Chad L Butler

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-12046 Buena Park Drive LLC

Chapter 11

#5.00 Motion for relief from stay [RP]

NATIONAL LOAN ACQUISITIONS COMPANY
VS
DEBTOR

Docket 193

Tentative Ruling:

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

Movant(s):

National Loan Acquisitions

Represented By
Howard Camhi
Jivko Tchakarov

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1:20-10026 Joseph Wanamaker

Chapter 7

Adv#: 1:21-01063 The Affiliati Network, LLC et al v. Naud et al

#6.00 Status conference re removed proceeding and order to show
cause re remand

Docket 1

Tentative Ruling:

See calendar no. 10.

Party Information

Debtor(s):

Joseph Wanamaker

Represented By
Peter M Lively

Defendant(s):

DOES 1 - 500 inclusive

Pro Se

Naud Muscle Inc. a Nevada

Pro Se

Prime Muscle Supplements Inc. a

Pro Se

Scott Sport Nutrition Inc. a Nevada

Pro Se

Total Fitness Supplements Inc. a

Pro Se

FITCREWUSA Inc.a Nevada

Pro Se

Direct Media Sales Inc., a business

Pro Se

UR Media Group Inc., a Nevada

Pro Se

Ship Plus Logistics, a California

Pro Se

Patrick M. Merrigan

Represented By
David Brian Lally

Jeffrey Scott

Represented By
David Brian Lally

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CONT... Joseph Wanamaker

Chapter 7

Joseph Naud

Represented By
David Brian Lally

Christine Naud

Represented By
David Brian Lally

Media Core, Inc. a Nevada

Pro Se

Plaintiff(s):

Sanjay Palta

Pro Se

The Affiliati Network, LLC

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena

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1:20-11166 Lanny Jay Dugar

Chapter 7

Adv#: 1:20-01083 Bjornbak et al v. Dugar

#7.00 Pre-Trial conference re complaint objecting to discharge
[11 U.S.C.sec 727(a)(2), 727(a)(3), 727(a)(4), 727(a)(5), 727(c)]

fr. 12/9/20; 2/10/21

Docket 1

Tentative Ruling:

Contrary to Local Bankruptcy Rule ("LBR") 7016-1(b) and the Court's scheduling order [doc. 12], the parties did not timely file a joint pretrial stipulation; alternatively, the plaintiffs did not timely submit a unilateral pretrial statement. Instead, the parties filed status reports in which the parties dispute the adequacy of the defendant's production of discovery. In their status report, the plaintiffs note they expect to complete their discovery efforts in six to eight months.

However, on July 21, 2021, the Court held a hearing on the plaintiffs' motion to extend the discovery cutoff date. At that time, the Court extended the discovery cutoff date to September 30, 2021. As such, the discovery cutoff date has expired. On September 24, 2021, the Court also entered an order extending the deadline for the parties to file pretrial motions to October 31, 2021 [doc. 22]. Thus, the deadline to file pretrial motions also has expired.

The parties should be prepared to discuss these issues.

In their status report, the plaintiffs also request dismissal of the debtor's bankruptcy case. However, any such request must be made through a properly served and noticed motion in the debtor's main bankruptcy case. The Court will not entertain requests for dismissal of the debtor's bankruptcy case filed in this adversary proceeding.

The Court will continue the pretrial conference to **1:30 p.m. on December 8, 2021**. No later than **November 24, 2021**, pursuant to LBR 7016-1(b), the parties must file a joint pretrial stipulation. Alternatively, if the defendant does not cooperate with the filing of a joint status report, in accordance with LBR 7016-1(e), the plaintiffs must

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CONT... Lanny Jay Dugar

Chapter 7

file and serve a unilateral pretrial statement supported by a declaration regarding the defendant's failure to cooperate.

If the plaintiffs do not comply with these deadlines, the Court may dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the scheduling order.

Appearances on November 3, 2021 are required.

Party Information

Debtor(s):

Lanny Jay Dugar	Pro Se
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Defendant(s):

Lanny Jay Dugar	Pro Se
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Plaintiff(s):

David Bjornbak	Represented By Qiang Bjornbak
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Qiang Bjornbak	Represented By Qiang Bjornbak
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Trustee(s):

David Keith Gottlieb (TR)	Pro Se
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1:20-11286 Transpine, Inc.

Chapter 7

Adv#: 1:21-01024 GOTTlieb v. Tepper et al

#8.00 Plaintiff David K. Gottlieb, Chapter 7 Trustee's motion for
summary judgment

fr. 10/20/21

Docket 14

Tentative Ruling:

At the prior hearing on this matter, based on the defendants' agreement to vacate the real property at issue, the parties represented that they would file a stipulation to dismiss this adversary proceeding with prejudice. What is the status of that stipulation?

10/20/2021 Tentative:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

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CONT... Transpine, Inc.

Chapter 7

Defendant(s):

Daniel Tepper

Represented By
Baruch C Cohen

Oren Tepper

Represented By
Baruch C Cohen

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Ron Bender
Carmela Pagay
Beth Ann R Young
Richard P Steelman Jr

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Carmela Pagay
Richard P Steelman Jr

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1:21-11098 John Carmen Esposito

Chapter 7

Adv#: 1:21-01056 Goldman v. Esposito et al

#9.00 Status conference re: complaint

Stip to continue filed 9/28/21

Docket 1

***** VACATED *** REASON: Order approving stip entered 9/29/21.**

Hearing continued to 12/8/21 at 1:30 pm - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Carmen Esposito	Pro Se
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Defendant(s):

Laurina Rose Esposito	Pro Se
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Women in Porsche Inc.	Pro Se
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John Esposito Porsche Restorations	Pro Se
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Plaintiff(s):

Amy L. Goldman	Represented By Anthony A Friedman
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Trustee(s):

Amy L Goldman (TR)	Represented By Anthony A Friedman
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1:20-10026 Joseph Wanamaker

Chapter 7

Adv#: 1:21-01063 The Affiliati Network, LLC et al v. Naud et al

#10.00 Motion to remand

Docket 6

Tentative Ruling:

The Court will remand this action to state court.

I. BACKGROUND

On January 7, 2020, Joseph Wanamaker ("Debtor") filed a voluntary chapter 7 petition. Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee"). In his latest-amended schedule A/B [doc. 290], Debtor identified an interest in 4070 Wilkinson Avenue, Studio City, CA 91604 (the "Wilkinson Property"). Debtor also identified an interest in the following businesses:

- (A) A 50% interest in FitCrewUSA, Inc. ("FitCrew"), which Debtor valued as "unknown," stating that FitCrew was "balance sheet insolvent."
- (B) A 50% interest in UR Media Group, Inc. ("UR Media"), which Debtor valued at \$0, noting that the business "ceased conducting business prepetition" and was "balance sheet insolvent."
- (C) A 49% interest in Scott Sport Nutrition, Inc. ("Scott Sport"), which Debtor valued at \$0, noting that the entity's charter was revoked. In his latest-amended Statement of Financial Affairs [doc. 290], Debtor stated that, postpetition, Scott Sport ceased conducting business operations.
- (D) A 50% interest in Mediacore, Inc. ("Mediacore"), which Debtor valued at \$0, noting that the entity ceased conducting business in 2017.
- (E) A 50% interest in Total Fitness Supplements, Inc. ("Total Fitness"), which Debtor valued at \$4,685.63. Debtor stated that Total Fitness was "[t]he only equitable subsidiary affiliate of FitCrew that continues operations as of [the]

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petition date." In his schedule C [doc. 290], Debtor claimed his \$4,685.63 interest in Total Fitness as exempt.

In his SOFA, Debtor also indicated that, within the four years preceding the petition date, Debtor either: (A) was an officer, director or managing executive of; or (B) owned 5% of the voting or equity securities of, the following businesses:

(A) Ship Plus Logistics, Inc. ("Ship Plus").

(B) Prime Muscle Supplements, Inc. ("Prime Muscle"), which Debtor indicated existed until December 1, 2017.

(C) Naud Muscle, Inc. ("Naud Muscle"), which Debtor indicated has a defaulted charter.

Debtor did not schedule an interest in Direct Media Sales, Inc. ("Direct Media Sales" and together with FitCrew, UR Media, Scott Sport, Mediacore, Total Fitness, Ship Plus, Prime Muscle and Naud Muscle, the "Entity Defendants").

On November 15, 2020, The Affiliati Network, Inc. and Sanjay Palta (together, "Plaintiffs") filed proofs of claim against Debtor's estate, asserting an unsecured claim in the amount of \$2,161,101.01. Plaintiffs indicated that their claims were based on a prepetition judgment in favor of Plaintiffs and against Debtor and FitCrew.

On September 1, 2021, the Trustee filed a motion to sell the Wilkinson Property (the "Sale Motion") [doc. 232]. On October 6, 2021, the Court entered an order granting the Sale Motion (the "Sale Order") [doc. 283]. In the Sale Order, the Court approved the sale of the Wilkinson Property free and clear of liens, but provided that the lien in favor of Ship Plus, in the amount of \$575,703, would attach to the net proceeds from the sale.

On September 8, 2021, Plaintiffs filed a complaint in state court (the "State Court Complaint") against the Entity Defendants, Christine Naud, Joseph Naud, Patrick Merrigan and Jeffrey Scott (together, "Defendants"), initiating state court case no. 21STCV33193 (the "State Court Action"). In the State Court Complaint, Plaintiffs allege that, to prevent Plaintiffs from collecting on their judgment against FitCrew,

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Defendants fraudulently transferred FitCrew's assets to Defendants. As concerns the Wilkinson Property, Plaintiffs allege that, in March and April 2017, FitCrew transferred funds to Ship Plus, which funds were used as a deposit and down payment on the Wilkinson Property. Through the State Court Complaint, Plaintiffs request avoidance of transfers from FitCrew to Defendants and a money judgment against Defendants. Plaintiffs also requested a jury trial.

On September 14, 2021, the Trustee filed a complaint against Ship Plus (the "Ship Plus Complaint") [1:21-ap-01062-VK]. In the Ship Plus Complaint, the Trustee alleges that, in the loan application Debtor completed prior to the purchase of the Wilkinson Property, Debtor represented that the funds used as a deposit and down payment were Debtor's funds. The Trustee further alleges that, contrary to these representations, after Debtor was faced with litigation by Plaintiffs, Debtor signed a \$575,703 deed of trust in favor of Ship Plus. Through the Ship Plus Complaint, the Trustee seeks to avoid and preserve the lien held by Ship Plus against the sale proceeds as a fraudulent transfer.

On September 20, 2021, Defendants removed the State Court Action to this Court. On September 30, 2021, the Court issued an Order to Show Cause re: Remand [doc 2]. On October 4, 2021, Plaintiffs filed a motion to remand the State Court Action (the "Motion") [doc. 6]. On October 19, 2021, Defendants filed an Opposition to the Motion (the "Opposition") [doc. 16]. In the Opposition, Defendants assert that: (A) if the Court remands this proceeding, there will be a risk of conflicting rulings; (B) only the Trustee has standing to prosecute the State Court Action; and (C) proceeding with the State Court Action is a violation of the automatic stay. On October 22, 2021, Plaintiffs filed a reply to the Opposition [doc. 18].

II. ANALYSIS

A. Subject Matter Jurisdiction

Parties cannot consent to subject matter jurisdiction. *Clapp v. Commissioner*, 875 F.2d 1396, 1398 (9th Cir. 1989) ("Subject matter jurisdiction cannot be conferred upon the court by consent or waiver."); and *In re Marshall*, 264 B.R. 609, 619 (C.D. Cal. 2001) ("[I]n so far as the issue is the actual subject matter jurisdiction of the federal courts, rather than just the bankruptcy court's power to enter a final judgment,

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such jurisdiction cannot be conferred by consent.").

1. *Arising Under Jurisdiction*

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. *Arising In Jurisdiction*

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11" 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. *Related to Jurisdiction*

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). *See also Sanger v. Ahn*, 406 F. Supp. 3d 800, 806 (N.D. Cal. 2018), *aff'd* sub nom. *In re Ahn*, 804 F. App'x 541 (9th Cir. 2020) (noting that a bankruptcy court "related to" jurisdiction "also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367"). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the

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estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

Here, the State Court Complaint exclusively asserts California causes of action and involves nondebtor entities. As such, this action neither arises under the Bankruptcy Code nor arises in Debtor's bankruptcy case; the State Court Action could independently exist without Debtor's bankruptcy case. As such, the only possible jurisdictional basis is "related to" jurisdiction.

In the Opposition, Defendants argue that the Court has subject matter jurisdiction because the State Court Action involves property of the estate. Specifically, Defendants assert that only the Trustee has standing to recover the assets Plaintiffs seek to recover through the State Court Action. However, Plaintiffs, who hold a judgment against FitCrew, are requesting avoidance of transfers from *FitCrew*, a nondebtor entity, to Defendants. Plaintiffs have not named Debtor as a defendant. As such, Plaintiffs' action against nondebtor entities does not interfere with the Trustee's ability to recover fraudulent transfers made by *Debtor* to other parties.

Defendants specifically reference the allegations regarding the purchase of the Wilkinson Property as conflicting with the Trustee's allegations in the Ship Plus Adversary. However, as discussed in the Sale Order, the Trustee already holds the proceeds from sale of the Wilkinson Property. Through the Ship Plus Adversary, the Trustee seeks to avoid Ship Plus's interest in those proceeds. If the Trustee is successful, Ship Plus will not be able to recover the proceeds held by the Trustee. In that scenario, except from any distribution to Debtor's unsecured creditors, arising from the sale proceeds, Plaintiffs will not receive (and do not, through the State Court Action, seek to receive) the funds generated by the sale of the Wilkinson Property. If the Trustee is unsuccessful, the encumbered funds will be transferred to Ship Plus, in which case the estate will no longer have an interest in the funds. As a result, Plaintiffs' lawsuit against Ship Plus does not interfere with the Trustee's ability to

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proceed with the Ship Plus Adversary.

Defendants further argue that, previously, Plaintiffs have alleged that Debtor is an alter ego of some of the Defendants. However, Defendants have not presented a judgment holding that Debtor is an alter ego of any of the Defendants. Plaintiffs' prior allegations are not dispositive. In fact, the State Court Complaint does not include any alter ego allegations involving Debtor. [FN1].

Defendants also argue that the State Court Action may conflict with matters pending before this Court, such as requests for examinations under Federal Rule of Bankruptcy Procedure ("Rule") 2004 and an objection to Debtor's claim of a homestead exemption. However, Defendants have not articulated how these matters relate to the issues presented in the State Court Action, and the record does not reflect any overlap between the issues in Debtor's bankruptcy case and the State Court Action.

At most, the State Court Action may impact the value of Debtor's shares in some of the Entity Defendants. While some courts have held that a lawsuit's impact on the value of a debtor's interest in businesses may serve as a basis for "related to" jurisdiction, the impact is especially tenuous in this case. *See, e.g. In re Donovan*, 2005 WL 6491015 (Bankr. N.D. Ga. Feb. 9, 2005); and *In re Cooper*, 2005 WL 1995440 (Bankr. N.D. Iowa Aug. 15, 2005). As discussed above, Debtor did not schedule an interest in Direct Media Sales. With respect to the remaining Entity Defendants, Defendant either: (A) valued the business at \$0; (B) indicated the business was defunct; or (C) claimed an exemption in any scheduled value of the business. Consequently, even if Plaintiffs successfully obtain a judgment against the Entity Defendants, there is little impact on most of the businesses in which the estate has an interest; because the businesses are valued at \$0, the additional liability would not further devalue Debtor's shares beyond the zero value already scheduled.

If Plaintiffs are successful, the State Court Action may result in recovery of funds into FitCrew, in which Debtor scheduled a 50% interest. Under California law, creditors may avoid transfers and obtain monetary judgments to the extent necessary to satisfy the creditor's claim. *See* Cal. Civ. Code §§ 3439.07, 3439.08(b)(1). Thus, any amount recovered by Plaintiffs would be used to satisfy Plaintiffs' judgment (a separate liability of FitCrew), without any surplus left to increase the value of Debtor's shares in the business. As such, if Plaintiffs are successful, there may be reduction of

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Plaintiff's claims against the estate. Assuming the Court has subject matter jurisdiction, based on such a potential claim reduction, the Court will remand this matter to state court.

B. Equitable Remand

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court.'" *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)). See also *Century Bankcard Services, Inc. v. U.S. Bancorp.*, 318 F. Supp. 983, 985 (C.D. Cal. 2004) ("[A]ny doubt about the right of removal is resolved in favor of remand.").

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court

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- involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
 - (12) the presence in the proceeding of nondebtor parties;
 - (13) comity; and
 - (14) the possibility of prejudice to other parties in the action.

Id., 508 n.2. *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) (noting that courts typically consider these 14 factors in deciding whether to grant a motion to remand); *Stichting Pensioenfonds ABP v. Countrywide Financial Corp.*, 447 B.R. 302, 311 (C.D. Cal 2010) ("Because Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant factors may provide a sufficient basis for equitable remand.").

Here, the factors above overwhelmingly favor remand to state court. First, for the reasons discussed above, the State Court Action does not appear to have any effect on the efficient administration of the estate. For the same reasons, the State Court Action is remotely related to the main bankruptcy case. Next, although the causes of action are not particularly difficult or unsettled, the State Court Action exclusively asserts state law causes of action.

Moreover, assuming the Court has subject matter jurisdiction, there is no jurisdictional basis other than § 1334. The State Court Action also is not "core." The Supreme Court of the United States has held that even where a proceeding is covered by 28 U.S.C. § 157, the proceeding may not be within the bankruptcy court's constitutional adjudicative power. *Stern v. Marshall*, 564 U.S. 462, 499, 131 S.Ct. 2594, 2618, 180 L.Ed.2d 456 (2011). "[T]he question is whether the action at issue [a] stems from the bankruptcy itself or [b] would necessarily be resolved in the claims allowance process." *Id.*; *see also In re AWTR Liquidation Inc.*, 547 B.R. 831, 836 (Bankr. C.D. Cal. 2016). Defendants argue that the issues presented in the State Court Action are "core" because they would conflict with the Trustee's duties under the Bankruptcy Code. However, as explained above, the State Court Action will not impact the Trustee's ability to proceed with the Ship Plus Adversary and potentially avoid a lien of Ship Plus against the sale proceeds. Defendants have not otherwise articulated how the State Court Action stems from the bankruptcy or if the issues presented in the State Court Action would necessarily be resolved in the claims allowance process. Because this action is not "core," unless all parties consent, this

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Court would have to submit a report and recommendation to the District Court for entry of a final order or judgment, which would further delay the resolution of this proceeding.

In addition, because the State Court Action does not involve bankruptcy issues, presiding over this proceeding would burden the Court's docket; this Court has exclusive jurisdiction over bankruptcy issues and, unless necessary, need not also preside over state law actions between nondebtor entities. Given that only state law is at issue, comity also favors remand of this action. Further, Plaintiffs requested a jury trial. Finally, because of the delay caused by submitting a report and recommendation and Plaintiffs' request for a jury trial, parties would be prejudiced by the Court presiding over this adversary proceeding. As a result, the Court will remand the State Court Action.

III. CONCLUSION

The Court will remand the State Court Action.

Plaintiffs must submit an order within seven (7) days.

FOOTNOTES

1. Defendants also argue that Plaintiffs' prosecution of the State Court Action violates the automatic stay. Because Defendants have not presented any judgments holding that any of the Defendants are alter egos of Debtor, this argument is unpersuasive. To the extent Defendants are arguing that the State Court Action's impact on the value of Debtor's interest in the shares of certain Defendants is a violation of the automatic stay, courts have held that a lawsuit that impacts the value of an individual debtor's shares is not a violation of the automatic stay. *See, e.g. In re Furlong*, 660 F.3d 81, 89–90 (1st Cir. 2011) (internal quotation omitted) ("Though the automatic stay in the personal bankruptcy estate was still effective, we agree with the bankruptcy court that an automatic stay does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is 100% of the corporate stock."). In *Furlong*, the First Circuit Court of Appeals noted that "[t]his proposition is well-settled." *Id.*, at 90 n.9 (collecting cases from multiple circuits).

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Party Information

Debtor(s):

Joseph Wanamaker

Represented By
Peter M Lively
David B Lally

Defendant(s):

DOES 1 - 500 inclusive

Pro Se

Naud Muscle Inc. a Nevada

Represented By
David B Lally

Prime Muscle Supplements Inc. a

Represented By
David B Lally

Scott Sport Nutrition Inc. a Nevada

Represented By
David B Lally

Total Fitness Supplements Inc. a

Represented By
David B Lally

Direct Media Sales Inc., a business

Represented By
David B Lally

FITCREWUSA Inc. a Nevada

Represented By
David B Lally

UR Media Group Inc., a Nevada

Represented By
David B Lally

Ship Plus Logistics, a California

Represented By
David B Lally

Patrick M. Merrigan

Represented By
David B Lally

Jeffrey Scott

Represented By
David B Lally

Joseph Naud

Represented By

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Christine Naud

David B Lally

Represented By
David B Lally

Media Core, Inc. a Nevada

Represented By
David B Lally

Movant(s):

The Affiliati Network, LLC

Represented By
Stella A Havkin
David B Lally

Sanjay Palta

Represented By
Stella A Havkin

Plaintiff(s):

Sanjay Palta

Represented By
Stella A Havkin

The Affiliati Network, LLC

Represented By
Stella A Havkin
David B Lally

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena

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1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01005 US OPPS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

#11.00 Joint motion for approval of stipulation for dismissal of
727(a) 2 & (a) 4 causes of action of adversary complaint

Docket 11

Tentative Ruling:

Deny.

On September 27, 2021, the chapter 7 trustee (the "Trustee") filed an opposition to this motion asserting, among other things, that the plaintiff did not address the relevant standard for voluntary dismissal of a claim under 11 U.S.C. § 727 and improperly requested to seal the settlement agreement between the parties [doc. 12].

"A creditor who joins a § 727 claim with a § 523 claim wears two hats: a fiduciary hat for the § 727 claim, which is brought on behalf of all creditors, and an individual hat for the § 523 claim. In settling the litigation, the creditor may not disregard the fiduciary hat." *In re de Armond*, 240 B.R. 51, 57 (Bankr. C.D. Cal. 1999). Generally, a settlement of a claim under § 727 must benefit the estate and all creditors. *See In re Djili*, 2012 WL 5246510, at *5 (Bankr. N.D. Cal. Oct. 23, 2012)(citing *In re Smith*, 207 B.R. 177, 178 (Bankr. N.D. Ind. 1997)).

However, a majority of courts have held that a settlement of a plaintiff's § 523 claims coupled with dismissal of the plaintiff's § 727 claims is allowed where the settlement "is in the best interests of the estate" and if the settlement is not "tainted." *In re Babb*, 346 B.R. 774, 779 (Bankr. E.D. Tenn. 2006). Courts consider the following factors—

- (1) The nature of the wrongful behavior alleged in the complaint and the basis and support for those allegations.
- (2) Whether consideration for the dismissal is paid into the estate or only to the complaining creditor.
- (3) Whether the amount of consideration going to the complaining creditor is

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Mariyan Khosravizadeh

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greater than its expenses in prosecuting the action.

- (4) Whether other parties have filed objections to the proposed settlement.
- (5) Whether another qualified party in interest is willing to commit to taking over the litigation and pursuing it to judgment.
- (6) The degree to which the settling parties have sought the involvement of the [U.S. Trustee] and case trustee at an early stage of their settlement negotiations.
- (7) Whether or not a § 523 action is being settled at the same time that a § 727 action is proposed to be dismissed.

Id., at 780.

In addition, under 11 U.S.C. § 107(a), "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(b) and (c) set forth certain exceptions to this statute.

The plaintiff did not timely file a response to the Trustee's opposition addressing these issues. Without assessing the settlement agreement and/or reviewing a brief by the plaintiff discussing these issues, the Court cannot ascertain whether the parties may settle an adversary proceeding with claims under both 11 U.S.C. §§ 523 and 727 and whether the settlement agreement is subject to an exception to 11 U.S.C. § 107(a). Consequently, at this time, the Court will deny the motion.

The parties should be prepared to discuss how to proceed.

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Defendant(s):

Mariyan Khosravizadeh

Represented By

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Stephen L Burton

Does 1-100

Pro Se

Plaintiff(s):

US OPPS LLC, an Oregon Limited

Represented By
Jason D Ahdoot

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter J Mastan

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1:20-11850 Mariyan Khosravizadeh

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Adv#: 1:21-01005 US OPPS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

#12.00 Status conference re: complaint for non-dischargeability of debt
11 U.S.C. § 523(a)(2)(A); (a)(6), and of discharge 11 U.S.C. § 727(a)(2), (4);
(a)(3); (a)(4)(A)

fr. 3/24/21; 5/5/21 / 7/7/21; 9/15/21; 10/6/21

Docket 1

Tentative Ruling:

See calendar no. 11.

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Defendant(s):

Mariyan Khosravizadeh

Pro Se

Does 1-100

Pro Se

Plaintiff(s):

US OPPS LLC, an Oregon Limited

Represented By
Jason D Ahdoot

Trustee(s):

David Keith Gottlieb (TR)

Pro Se